IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1370 of 1985

with

CIVIL REVISION APPLICATION No 1371 of 1985

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARDASMAL G ROCHLANI

Versus

HEAD MISTRESS

Appearance:

1. Civil Revision Application No. 1370 of 1985

MR JR NANAVATI for Petitioners

MR RR TRIVEDI for Respondent No. 1, 6, 7

NOTICE SERVED for Respondent No. 2

MR DD VYAS for Respondent No. 4

2. Civil Revision ApplicationNo 1371 of 1985

MR JR NANAVATI for Petitioners

MR RR TRIVEDI for Respondent No. 1

NOTICE SERVED for Respondent No. 2

MR DD VYAS for Respondent No. 4

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 27/07/2000

ORAL JUDGEMENT

1. These are two revisions filed under the provisions of section 29(2) of the Bombay Rent Act at the instance of the original landlords who had sued the tenants for a decree of eviction under the provisions of the Bombay Rent Act.

2. These two revisions can be conveniently dealt with together inasmuch as the landlords in both the matters are the same, and had filed two separate suits inasmuch as separate properties are involved. Moreover, the defendants (original tenants) in the two suits were also the same viz. Jetpur Taluka Panchayat.

3. The landlords had filed both the suits on the same grounds viz. that the tenant was in arrears of rent for more than six months, that the tenant was guilty of unlawful subletting within the meaning of section 13(1)(e) of the Rent Act and that the tenant had erected a permanent structure on the leased premises without the permission of the landlord and was therefore liable to be evicted under section 13(1)(b) of the said Act.

4. The trial court, on a total consideration of the evidentiary material on record, dismissed both the suits of the landlord on each of the grounds. The landlords, therefore, preferred an appeal to the lower appellate court under section 29(1) of the Bombay Rent Act. The lower appellate court, after a total reappreciation of the entire evidentiary material on record, confirmed the findings of the trial court on all the three grounds, and dismissed the appeal, confirming the dismissal of the suits of the landlords on all the three grounds. Hence the present revision under section 29(2) of the Bombay Rent Act.

5. Before proceeding with the merits of the matter it would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with the revisions arising under section 29(2) of the said Act. The Supreme Court in the case of Patel Valmik Himatlal & Others Vs. Patel Mohanlal Muljibhai [1998(2) GLH 736 = AIR 1998 SC 3325], while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai Vs. Saiyad Mohmad Mirasaheb Kadri [AIR 1987 SC 1782], held that High Court cannot function as a court of appeal, cannot reappreciate the evidence on

record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible.

6. Only a few salient features require to be noted.

7. It is common ground, and there is no dispute as to the fact that the properties in question were declared as evacuee properties and were under the possession and control of the Administrator appointed under Administration of Evacuee Property Act, 1950. It was the said Administrator who had let out the premises to Jetpur Taluka Panchayat, who was at that point of time entrusted with the task of running the two schools in question (one in each of the two premises) viz. Main Kanyashala, Jetpur and Sindhi School, jetpur. It is common ground that no rent note was executed at the time of letting. It is also common ground that thereafter the present plaintiffs-landlords purchased the property in auction on 12th December 1962 and the relevant sale certificate was issued in their favour on 15th June 1963. It is, therefore, obvious and also common ground that the Taluka Panchayat was a sitting tenant on both the premises when the plaintiffs acquired title to the property through public auction and sale certificate in their favour.

8. On the facts of the case this is one of the unique cases, or at least a very unusual case, where the landlord, in the statutory notice issued to the tenant under section 12(2) of the Rent Act, has contended that the contractual rent is extremely meagre and that the standard rent of the premises ought to be far higher. He has quantified in his estimation what the standard rent ought to be, and has, therefore, demanded rent from the tenant on the basis of his own assertion of the standard rent and not on the basis of the contractual rent.

9. On the facts of the case the trial court found that the contractual rent was also the standard rent in respect of both the premises. Both the trial court as also the lower appellate court found that the tenants had sent to the landlords the due rent by money order within 30 days of receipt of the statutory notice. The amount transmitted was at the rate of contractual rent, which ultimately both the courts found to be the standard rent.

Thus, both the courts below found that the tenant was ready and willing to pay the rent within the meaning of section 12(1) of the Rent Act, that the rent due and payable was paid before filing of the suit, and that therefore the landlords in fact had no cause of action at all.

10. As an off-shoot of this peculiar set of circumstances, both the courts below found (on a specific issue raised and considered) that the statutory notice issued by the landlord was illegal and was outside the parameters of section 12(2) of the Act, inasmuch as the demand was in respect of an amount not computed on the basis of contractual rent, but on the basis of a figure far higher than the contractual rent, as unilaterally determined by the landlords.

10.1 Once it is found on the facts of the case that the contractual rent is the standard rent, and the appropriate amount was transmitted by the tenant to the landlord within 30 days of the suit notice, obviously the landlords had no cause of action.

11. The landlords had also sought possession on the ground of unlawful subletting within the meaning of section 13(1)(e) of the Rent act. Both the courts below have found that firstly it is not the case of subletting and moreover the same is not unlawful. The original tenant was Jetpur Taluka Panchayat which was entrusted in law under the provisions of the Panchayats Act with running the schools in question. It was merely that the administration of the school was transferred by operation of law from time to time. Both the courts have, therefore, found that it was not a voluntary act of the tenant, whereby a sub-tenancy was created. Furthermore, on the facts of the case this would not be a creation of sub-tenancy also for the reason that, although the administration of the school was transferred by operation of law, there was no element of valuable consideration involved in the transfer. It is by now well settled that in order to establish "unlawful subletting", the landlord must establish that the tenant has created a sub-tenancy for valuable consideration. This element is conspicuously absent on the facts of the case, and on a closer scrutiny, I find that it is also absent from the pleadings of the plaintiffs-landlords. Thus, the findings of the two courts below of rejecting the landlords' suits on this ground, are required to be upheld.

12. The third ground for eviction urged by the

landlords was that the tenant had made a permanent construction upon the property without the permission of the landlord and therefore the landlords were entitled to the decree for eviction under section 13(1)(b) of the Act. Both the courts below have recorded concurrent findings of fact to the effect that the construction in question consists of a pair of urinals adjoining each other, with a wall across the front (to afford reasonable privacy). Both the courts have found that these constructions are not of a permanent nature. Even on a reconsideration of the evidence on record, I find that these findings are justified.

13. In this context it is relevant to note that the defendants had contended that it was not they i.e. the defendants, who had constructed the urinals, but the same were already in existence when they became tenants in respect of the suit premises. No doubt, the landlords had contended that the construction was put up by the tenants, but the most significant aspect of the matter, in the peculiar circumstances of the case, appears to have escaped the attention of both the courts. The present plaintiffs-landlords had acquired the property only on 15th June 1963, which is the date of the sale certificate, consequent to the public auction held by the Administrator of the evacuee property. It is only on the latter date when the plaintiffs acquired title to the property, and it was only on this date that they became "landlords" within the meaning of the Bombay Rent Act. Thus, in order to have any cause of action under section 13 (1)(b) of the Rent Act, it was necessary for the landlords to both plead and to prove that the tenants had made such construction after the plaintiffs became the landlords. On a careful scrutiny of the pleadings as well as the evidence on record, it is found that the landlords have neither pleaded nor proved that the construction has been put up by the tenants after the plaintiffs acquired title to the suit property. Thus, even on an assumption (which is not justified on the facts of the case) that the defendants had put up a permanent construction, unless the landlords prove that such construction was put up after they had acquired the title to the property, the landlords would not have any cause of action under section 13(1)(b) of the Bombay Rent Act.

14. In the premises aforesaid, the findings of fact on record and the conclusions therefrom resulting in the judgement and decrees of both the courts below are eminently sustainable and are required to be upheld. Consequently there is no substance in the present

revisions and the same are, therefore, dismissed. Rule is discharged with no order as to costs.

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